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26 Terminology work in different domains: legal terminology

Abstract: The object of study of terminology is the knowledge units of a specific domain. This paper sets out to identify the knowledge units of law by describing the features and characteristics of legal concepts and stressing the importance of conceptual information for terminology and translation. Legal concepts are bound to a specific legal system and equivalence across legal systems does not exist in principle. Against the background of this system-specifity the paper brings forward a comparative approach in legal terminology work which safeguards clarity and unambiguity in legal communication across borders.

Terminology is defined as an inter- and trans-disciplinary subject which investigates the objects, concepts and their representations as well as the relations between them with the overall goal of ensuring and augmenting "the quality of communication with professional context regardless of the level of professionalism of the users" (Picht 2006: 10). Against the background of this assumption, we may set out to see what are the features and characteristics of legal concepts or legal knowledge units trying to join these findings with the overall aim of legal communication across borders and illustrate the procedure of a comparative approach to legal terminology.

By legal terminology we understand terms and concepts used in law as the building blocks of all communication, and as such of legal translation, as well as of legal knowledge representation. Avoiding the much cited dichotomies of words against terms, or meaning against concepts or even language against content which is omnipresent in much of the introductory work on terminology (Myking 2007), we would like to refocus on the overall goal of specialist communication or in our case of legal communication as well as legal knowledge representation. Thus, we see terminology as cognitive units of knowledge represented by terms while terminological products and tools provide the necessary background to be able to use these concepts and terms adequately in texts.

For this contribution we are assuming that law represents a specialized subject field along the lines of other subject fields such as botany, physics or economics which due to internal needs has developed particular features such as its trans-disciplinarity, meaning that law may be applied to every subject and in every legal text we may find both actual legal terms as well as other terms from the subject which is regulated, the fact that law addresses both legal experts and lawyers as well as lay people or citizens and the fragmentation of law into independent national legal systems (Sandrini 1999a: 14).

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The first part of this contribution focuses on the legal concept: how a legal concept is constructed and what the peculiarities of legal concepts are in contrast to other disciplines. Then, we move on to look at how legal experts describe their concepts and what kind of concept descriptions are used. In law, descriptions and concepts are specific to a legal system and this must be indicated clearly in all terminological products. It is this bondage to a national tradition and a specific community that complicates the comparison of concepts and multilingual terminology, once a system of defined concepts is in place. Terminological products such as term bases and glossaries are the product of terminological research including a comparative analysis, and reflect the knowledge structure of a legal domain describing its specific terms and concepts in the context of each national legal system.

1 Legal concepts

For Hoffmann (1993: 614) the very core of specialist communication is formed by knowledge systems and cognitive processes, and he defines specialist communication accordingly (see chapter 29 on Legal Translation in this volume). If we see law as a specialized discipline concepts are at the center of legal knowledge and constitute its main units. Concepts are considered by most terminological approaches a central element of terminology (Picht and Laurén 2006: 176), at least if we consider terminology as a knowledge-oriented discipline, and not so much as a special type of lexicography (e.g. Bergenholtz and Tarp 1995).

Although some authors doubt the existence of language-independent concepts in law (see e. g. the claim for nominal definitions in Wiesmann 2004a: 43), others, inclusive of the author of this contribution, favor a more specialist approach to law, defining law as a specialist subject field with its own knowledge structure, its own concepts, ideas and goals, just like any other subject field. With this approach, language is seen as a tool, albeit an important one, which is used to communicate legal content as well as to communicate about legal content.

In law, concepts are formed according to two main procedures: abstraction and concept construction. While abstraction represents the standard cognitive procedure for concept creation forming new concepts by filtering common features from a multiplicity of objects, concept construction represents a social phenomenon: “Bei der Begriffskonstruktion, insbesondere im Recht, wird einem Bedarf Rechnung getragen, der aus den ethischen, moralischen, ideologischen, religiösen, politischen oder sonstigen Maßstäben bzw. Vorstellungen einer Gesellschaft oder zumindest der Mehrheit der Mitglieder derselben entspringt” (Picht 2010: 21); (*concept construction, especially in law, fulfills specific needs or expectations by society, or at least by the majority of its*

members, coming from ethical, moral, ideological, religious, political or other standards; translation by author).

Ideas and Concepts must be sufficiently precise and specific, thus differentiating themselves from general concepts, to fulfill the function of law as a conflict-solving mechanism. On the other hand, legal concepts must be all-inclusive so that they are able to cover every relevant situation (Bhatia et al 2005: 10). Being all-inclusive they tend to be vague "as vagueness makes it easier to interpret a normative text in a suitable way" (Bhatia et al 2005: 10) or semantically open (Hudalla 2012: 100). For legal concepts we may identify three layers of vagueness (Arntz and Sandrini 2007: 137):

1) Both the creation of legal concepts in the course of legislative or jurisprudential activity as well as their use and interpretation within jurisdiction depend heavily on the social, ethical and moral environment which is subject to change over time and liable to ideological influence leading to an intrinsic vagueness of legal concepts. This is in no way intended, nor can it be directly influenced, it is simply a matter of fact and thus inherent in every legal system.
2) For a subset of legal terms we may speak of intentional vagueness which is characterized by deliberately leaving open the definitional content in favour of a broader interpretation by the courts. The primary function of such abstract concepts is to provide a certain degree of adaptability by leaving space for the unexpected, for change in the legal system through widening the scope of interpetation. Examples for such intentional vague concepts are *honesty, good faith, fair use, state of emergency*, etc.
3) Sometimes legal concepts are not defined properly in the course of the legislative process, they may not be sufficiently delimited from neighbouring concepts, or words from general language are taken without a proper re-definition which leads to a kind of accidental vagueness.

The first two kinds, intrinsic and intentional vagueness, can be referred to as subject-specific vagueness and they "are considered indispensable resources for the expression of legislative intentions in all legal systems" (Bhatia 2005: 352); they are essential and inevitable in law while the third type, accidental vagueness, can be traced back to communication problems and leads to misunderstandings and ambiguities.

It is precisley the aim of systematic terminological documentation of concepts and terms to reduce vagueness, or at least to point out possible sources of ambiguity to be taken care of by experts with regard to the third type of vagueness considering the first two types of vagueness as systemic. Legal terminology has to deal with subject-specific, intrinsic and intentional, vagueness as it is a constitutive element of law. Thus, precision and vagueness are the two extremes that characterize the definitional work and the description of legal concepts.

2 Description of legal concepts

The dichotomy between terms and words, for some researchers fundamental (Wüster 1993), for others only perceived and contested (Kageura 1995, Pearson 1998), is further complicated in law by the characteristics of legal language. An essential assumption for legal language is that it should be comprehensible for all people since it regulates their lives: it is aimed both at professional lawyers and at lay persons. In addition, legal terms are taken from general language and given a specific legal meaning that may lead to misunderstandings.

In terminology we define concepts, we do not define terms or words. As trivial as this statement may sound, it clearly describes the two approaches to terminology with regard to definitions: the lexicographical-linguistic and the cognitive-conceptual approach. For a lexicographic approach, lexemes or linguistic parts of a text are described in their meaning, and, thus, we have a clear distinction between lexicographical descriptions and the definitional needs of a subject field from a knowledge perspective. In this sense, Wiesmann states, legal and lexicographical requirements must be kept apart: "juristische und lexikographische Erfordernisse auseinander gehalten werden müssen" (Wiesmann 2004a: 225). In the first case, a definition serves to convey the essential features of the legal concept, in the second case, or by applying a semasiological procedure, the definition highlights the linguistic use of a legal term. For terminological purposes an onomasiological approach is most suitable to describe legal concepts in conformity with the requirements of the subject field to grasp the content side (Engberg 2013: 10) and to convey the legal knowledge which is necessary to be able to assess equivalence and evaluate the choice of terms in a text. For the following discussion, the scope of a definition encompasses the legal concept and its normative function: "en terminologie, on ne cherche pas à extraire le sens d'une forme linguistique, mais au contraire, le concept étant defini, on se pose la question de savoir quelle forme linguistique le représente" (Rondeau 1984: 18) (*In terminology we don't try to extract the meaning of a linguistic form, it is rather the other way round, we have a defined concept for which linguistic representations must be found;* translation by author).

Definitions are subject to the different legal traditions or legal families, such as the Common Law tradition or the Civil law tradition, which have a decisive influence on the scope of interpretation of a definition as well as on definitional practices. In concept-oriented terminology a definition consists of the characteristics of a concept, its intension. These characteristics can be subdivided into essential and accidental characteristics: „Even when all experts agree on the major parts of a concept, there may be ongoing discussions at the margins between different experts" (Engberg 2013: 18). Interpretation of statutes and laws often leads to a discussion, adjustment or change of the definition of a concept, sometimes even to the expansion of its application. Legal concepts, therefore, may be defined by describing their characteristics, but also by delimiting their scope of application, i. e. by an extensional definition.

Starting from an empirical analysis of a corpus of texts, Ralli and Ties (2006: 410) enumerate four types of definitions in law:

1. explicit definition: when legislators explicitly define a legal concept in a statute or law;
2. implicit definition: when a normative text contains a description of a concept from which legal experts are able to retrieve a definition by applying interpretation procedures;
3. stipulative definition: an arbitrary statement determining the meaning of a term for the purposes of argumentation or discussion in a given context;
4. redefinition: elaboration or deepening of an existing definition for the purpose of stating more precisely the meaning of a term in a new context.

It is not only the types of definitions that are relevant in law for the description and further development of legal concepts but also the communicative interaction between legal experts over time. Commentaries, discussions, amendments of statutes all contribute to integrate different opinions of legal experts into existing legal definitions. Legal translators and terminologists may gain specific insights and "information about the relative importance of the different parts of a concept" (Engberg 2013: 18) from consulting also secondary sources of law such as scholarly writing and commentaries.

3 System-specificity of legal concepts

Multilingual legal terminology is a designation which is better avoided since it does not distinguish between legal terms coming from different legal systems, on the one hand, and terms in different languages from the same legal system, on the other hand. We prefer to speak of multinational legal terminology or of system-bound legal terms. There is no such thing as an international legal language because of independent national legal systems: "Wegen der Systemgebundenheit juristischer Terminologie gibt es praktisch keine internationale juristische Fachsprache" (de Groot 1999: 12) (*Because of the system-specificity of legal terms there is practically no international legal language;* translation by the author). Concepts are created and constructed in the context of a national legal system with its own tradition of laws, interpretative principles and legislative procedures. Furthermore, each society may forge new statutes and norms on her own initiative according to the principle of democratic self-determination.

System-bound concepts may well be represented by terms in more than one language in the case of multilingual nations, or conversely, one language may be used for different legal systems. This is why it is extremely important to highlight the legal background of concepts by specifying the legal system they belong to. And this is another reason why a conceptual approach to legal terminology is needed and why the analysis should not stop at the level of language.

De Groot and van Laer (2008) also act on the assumption of system-bound concepts in law and identify the following exclusive cases when a relative convergence of legal concepts may occur: "a) there is a partial unification of legal areas [...]; b) in the past, a concept of the one legal system has been adopted by the other and still functions in that system in the same way, not influenced by the remainder of that legal system" (de Groot and van Laer 2008: 2).

The resulting "inherent incongruency of the terminology of different legal systems" (Šarčević 1997: 235) has its repercussions on the applicability of the notion of equivalence in legal terminology but also on the terminographical methods to apply.

4 Comparison of system-bound legal concepts

What is here at stake is the concept of equivalence in general and in terminology in particular. Put in another way, the question arises how we can compare specific legal concepts across the boundaries of idiosyncratic legal traditions and join them into one terminographical entry, in line with the largely accepted notion of concept-oriented terminographical models that all information belonging to one concept should be stored in one entry. Legal concepts, however, are culture-specific or dependent upon legal traditions and cannot be equated with concepts from different legal systems.

Equivalence measures the degree by which two concepts are corresponding or identical. To be able to do this, terminology investigates the constituent features or characteristics of concepts and compares them. When the "preeminent goal of descriptive terminology is to describe relations between the concepts of a defined subject field and to identify the terms in two or more languages which designate one concept" (Cole 1991: 18), we have to remark that such an approach can be followed only within one legal system. If terms in different languages from two legal systems are compared they never designate one common concept. As legal concepts are system-bound and the product of a historic development, embedded in a tradition of jurisdiction and interpretative practice as well as the result of conscious decisions by legislators, they cannot be identical to the concepts of another legal system with its diverging traditions and political preferences. Thus, we postulate the following basic assumption: There is no equivalence between concepts from different legal systems.

Equivalence in terminology is defined as a relation between concepts having the same characteristics corresponding to intensional identity (Arntz, Picht and Mayer 2002: 159). Due to the system-bound specificity of legal concepts this is only possible for concepts rooted in the same legal system or "full equivalence only occurs where the source language and the target language relate to the same legal system " (de Groot and van Laer 2008: 2). Some authors recognize the problem of equivalence in law, but still they use the term equivalence albeit in a attenuated way, as a kind of limited equivalence, like, for example, Šarčević who distinguishes cases of near equivalence and cases of partial equivalence aside form cases of non-equivalence in law (1997:

238). Decisive for all of these cases of limited equivalence is the correspondence of conceptual characteristics subdivided into essential and accidental characteristics. The "optimum degree of equivalence" (Šarčević 1997: 238) in law is near equivalence when two concepts "share all of their essential and most of their accidental characteristics (intersection) or when concept A contains all of the characteristics of concept B, and concept B all of the essential and most of the accidental characteristics of concept A (inclusion)" (Šarčević 1997: 238). All other cases of partial equivalence and non-equivalence may still be relevant for translation purposes but must be decided on a case per case basis depending on the circumstances of the translation as well as the use of the target text. In this sense Kisch states: "Bref, la question de l'équivalence est une question d'ordre pragmatique" (Kisch 1973: 412) (*the question of equivalence is a pragmatic one*, translation by the author).

The concept-oriented approach, however, is of overall importance and should not be dismissed altogether in law. Some linguist have done so in favor of more lexicographical methods applying traditional procedures of lexicography to the structure of their dictionaries (e. g. Nielsen 1994, Wiesmann 2004a) contrary to the conviction of scholars in the area of legal translation and legal terminology. Indeed, as early as thirty years ago (Gémar 1979, Šarčević 1985, de Groot 1986) scholars stressed the importance of the conceptual background of legal terms as well as the implied legal knowledge behind the terms in compiling bilingual terminologies. And there is no doubt, whatsoever, as to the importance of legal background knowledge and a sound understanding of legal concepts as a essential prerequisite for the translation of legal texts (Stolze 1999: 45, Cao 2007: 54, Sandrini 1999a: 38, 2009: 36, Šarčević 1997: 121 and others). Thus, we may formulate a second assumption: Conceptual information is essential for legal terminology and legal translation.

In legal translation, the translator has to have conceptual information on the legal topics the source text is dealing with; first, legal knowledge in the legal system of the source text to be able to understand the text, and second, legal knowledge of the target system to be able to author a consistent and perfectly understandable translation. This holds true even more for the legal terminologist who needs profound legal knowledge to be able to describe, assess and classify the concepts within the legal system they belong to as well as to be able to evaluate and judge their degree of equivalence with concepts from another legal system. Both steps are very hard to imagine without legal knowledge.

Of particular importance is, however, the procedure of assessing the degree of equivalence between concepts from different legal systems in the light of our first basic assumption. Where equivalence is not possible, we may still be able to grasp degrees of equivalence like the mentioned approach by Šarčević, or comprehend different embeddings of concepts within their legal systems, detect differences of interpretation, or find out diverging conceptual structures. This can be done by a comparative approach which strives to understand the relative function of each concept within its legal system by asking "quelle est sa fonction, quel est le problème

qu'elle vient résoudre?" (Moréteau 2005: 420) (*What is its function, what is the problem intended to resolve;* translation by the author). Šarčević states in this respect: "Since most legal systems provide solutions for basically the same problems, comparative lawyers maintain that concepts and institutions of different legal systems can be meaningfully compared only if they are capable of performing the same task, i. e. they have the same function" (Šarčević 1997: 235). Such a functional approach analyses the system-specific function of a concept and searches for a comparable function of a concept in another legal system. Diverging conceptual features, different concept structures and other structural problems let a functional approach appear as the best solution in order to offer as much as possible information about the legal background of the concepts in question: "la fonction, clé de la comparaison" (Moréteau 2005: 419) (*function, the key of comparison;* translation by the author).

Obviously, this requires "considerable comparative law skills" (Šarčević 1997: 235) for terminologists to apply such a comparative approach, but also for legal translators to judge the adequacy of functional alternatives. Thus, "translators of legal terminology are obliged to practice comparative Law" (De Groot 2000: 133) and we would add that indeed legal terminologists are obliged to practice comparative Law when they set out to compare legal concepts across the boundaries of legal systems. In this sense, we venture out to state the following: Multilingual legal terminology with concepts from different legal systems is necessarily the result of a comparative analysis.

When Engberg (2013: 13) states that "contrastive terminology is interested in equivalence between concepts, whereas comparative law is interested in equivalence between legal rules", the concept of equivalence is used here to mean the degree of equivalence or, better yet, the amount of sameness or of difference of the concepts involved. It should be added that both, terminologists and comparative lawyers, are first and foremost interested in getting to know the legal background and the embedding of concepts and rules. But, a difference in the degree of the depth of analysis can be noted because the aim of the comparison is different: terminologists are obviously not interested in publishing a comparative legal study: "wenn auch natürlich nicht mit der Zielsetzung, eine rechtsvergleichende Veröffentlichung vorzubereiten" (de Groot 1999: 12) (*albeit not with the intention to publish a comparative study;* translation by the author).

It must be stressed that the final result of a terminological approach in law cannot be the establishing of cases of equivalence. This is the task of the legal translator who looks for pragmatic equivalents which fit into the communicative situation of his specific translation (see e. g. 'subsidiary solutions' by de Groot and van Laer 2008: 3). A terminologist follows a more systematic approach independent of a particular communicative setting. A terminological product, be it an electronic termbase or a glossary, has to provide the background knowledge which enables a text producer or a legal translator to take his text-bound decisions. The following steps illustrate a comparative approach to legal terminology (Sandrini 1999b: 105) which has been applied effectively, for example, to the Norwegian-Chilean terminology of aquaculture (Våge 2010) and the Russian-Austrian terminology of public companies (Naydich 2011).

Comparing the knowledge structure of two legal systems requires a starting point: in philosophy this is called a 'tertium comparationis' constituting the basis of a comparison and by definition independent of the two legal systems involved. Such a comparative basis can be identified in the social function of law where legal rules and legal concepts serve as a tool to control and regulate a certain aspect of real life.

The basic question to ask is how a specific social problem is addressed by legal system A and what tools, rules and concepts, are used. In practice, a terminologist would start bottom up from the concepts of one legal system whose function, purpose and structure should be analyzed to provide a specific legal setting which in turn regulates and refers to a certain societal aspect. Once this analysis for legal system A is in place, the procedure goes top down and looks for the corresponding legal setting and the concepts that structure it within legal system B.

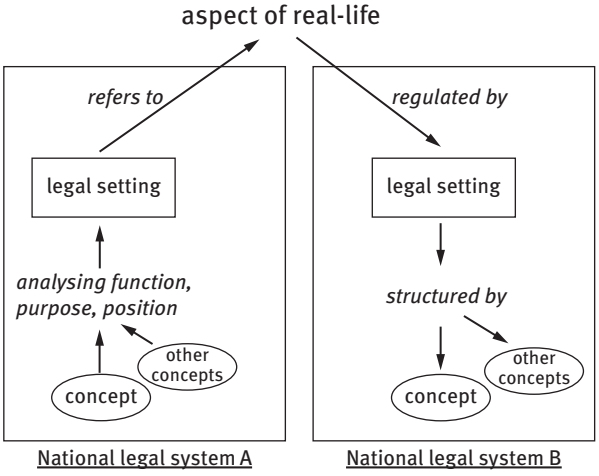

Figure 1: Comparative procedure for legal terminology

An alternative way which departs somewhat from comparative law and its methodology and focuses more on single concepts is the 'conceptual comparison' proposed by Brand (2007) in which the 'tertium comparationis' is represented by the construction of a neutral, independent and abstract concept on the basis of comparable features identified in the actual concepts of one legal system allowing, thus, the identification of comparable concepts in the other legal system.

Every comparative analyses is based on four elementary components (Naydich 2011: 32): 1) the legal setting for which in most legal systems a superordinate concept is used, 2) the legal building blocks (rules, provisions, customary practice), 3) individual concepts and facts contributing to structure the legal setting and 4) the way in which all concepts involved interact (conceptual system). All four aspects can be compared and the results are documented to depict the legal background.

An adequate documentation of the results of a comparative approach requires an adaptation of the traditional way to display glossary entries. Since the all-important purpose of such a documentation of results would be to convey as much information as possible on the concepts and the terms used in both legal systems, an adequate terminographical product resembles – more than a dictionary – a knowledge base on a very specific legal subject. A comparative analysis of legal concepts requires an adequate terminographical entry structure.

It must be clear to which legal system every piece of information, legal or linguistic, refers to. Definitions are extracted or written for a specific legal system, terms are used not in a language but in a legal system – we may have a German term which is used in Austria but not in Germany or an English term used in Great Britain but not in the US. Thus, comparative terminology always involves two legal systems and usually two or more languages, though a monolingual comparative analysis is also conceivable, e. g. a comparison of US vs GB English legal terms.

The main difficulty derives from the lack of equivalence since the concept-oriented terminographical method is based on the principle 'one concept – one entry'. Our first basic assumption (see above) prevents us from having bilingual entries because the concepts from different legal systems can never be absolute equivalents and, thus, cannot be integrated into one conceptual entry or, exceptionally, may be combined into one entry only if the four mentioned comparative aspects correspond. One approach would be to slightly stretch the terminographical principle combining similar concepts by adding comprehensive notes illustrating differences, disparities, nuances (Wiesmann 2004a: 166; Mayer 1998: 185). Another possibility would be to separate the concepts of the two legal systems accurately and build links between them according to the degree of sameness resulting from the comparative analysis. Such relations may be direct relations in cases of corresponding conceptual characteristics, functional relations where two concepts have the same function as an element in the specific legal setting of each legal system and, as such, they have some conceptual features in common, or indirect relations when both concepts relate to a comparable function within this legal setting in each legal system, but they have no features in common (Sandrini 1999b: 107). Additionally, a link between the terms and concepts of two independent legal systems may be established on the basis of the relative knowledge structure either by making use of concept relations which could represent an aid for the user to see if the superordinate concept or any other related concept links to concepts in the other legal system, or by establishing a link to the respective legal setting which enables the user to see all the concepts which contribute to this particular legal setting in the other legal system.

5 Conclusions

Understanding legal concepts across the borders of nations and languages is becoming more and more important in a globalized world. One has to be aware, though, that

the discipline of law has its own peculiarities which have to be addressed to avoid communication pitfalls. The potential vagueness of legal concepts – being intrinsic, intentional or accidental – can be reduced by accurately researched terminology and a deliberate and thoughtful use of legal terms in text production and translation taking into consideration that all legal terms and concepts are characterized by the peculiarities of the legal system they belong to.

A conceptual approach is absolutely necessary for the documentation of multinational legal terminology in order to convey the legal background of each concept and the system-specific legal setting in which it is embedded. Due to this system-specificity there can be no equivalence between concepts originating from different legal systems. Only on the basis of a conceptual description and a comparative analysis based on a functional approach the degree of correspondence may be established and documented. The results in a glossary or a terminology database have to be presented in a way which makes it clear for every piece of conceptual or linguistic information which legal system they refer to. This analytical information can then be used by translators or text producers in law to decide which concepts best fit according to their specific communicative situation.

Legal terminology represents a challenging subject, and preparing terminological works of reference in law can be a daunting task when not based on well-thought-out procedures and representational models; only then, they represent valuable and useful tools for legal text producers and legal translators going beyond traditional paper-bound dictionaries.

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